

REMARKS

Applicant has carefully considered the matters raised by the Examiner in the outstanding Office Action but remains of the position that patentable subject matter is present. Applicant respectfully requests reconsideration of the Examiner's position based on the amendments to the claims and the following remarks.

The Examiner had considered the Application in condition for allowance subject to the cancellation of withdrawn claims 5-8. Applicant has cancelled withdrawn claims 5-8 and thus deems that the Application is now in condition for allowance.

The Examiner had set forth the reasons for allowance of the Application on pages 3-5 of the Office Action. Applicant respectfully disagrees with the Examiner's characterization of the reasons for allowance of the Application and has the following comments.

The Examiner had made the following statements in the Office Action:

(1) Tappe teaches the presence of sodium ions and potassium ions and the Application does not teach unusual or unexpected results from the recited ratio of sodium to potassium ions (paragraph I(A));

(2) Example 4 of Tappe is superior to the composition of claim 1 (paragraph I(B)(1));

(3) the claims are not limited to the tested conditions of 50 °C and 4 months storage, and there is no evidence on the record to show that the claimed compositions are superior to Example 4 of Tappe (paragraph I(B)(2) and paragraph C(2));

(4) no weight is given to the comparison of Table A (January 30, 2004 Declaration of Mr. Satake) because it is not a side-by-side comparison in terms of chemical ingredients and amounts (paragraph I(B)(3));

(5) no test data has been presented for alleged homologues A-II-3 and A-II-9 of the Application (paragraph I(B)(5)); and

(6) only a limited showing has been made to show that compounds A-II-3 and A-II-9 are better than EDTA (Table 1, April 19, 2004 Declaration of Mr. Satake) because Example 4 of Tappe was used for the tests (paragraph C(1)).

Applicant respectfully disagrees with statements (1)-(6) summarized above and has the following comments in response:

(1) Table 1 on page 40 of the Application demonstrates the criticality of the claimed range. Specifically, Comparative Examples 8 and 9 have a Na:K ratio falling below the claimed range, while Inventive Examples 10 and 11, for example, have a Na:K ratio falling within the claimed range;

(2) Table 1 of the April 2004 Declaration demonstrates that Example 4 of Tappe is inferior to the composition of claim 1 in terms of variation in oxidation-reduction potential and variation in gamma balance;

(3) The claims should not be limited to the tested temperature and storage conditions as these testing conditions were merely used to exhibit inherent properties of the composition of claim 1. Again, Table 1 of the April 2004 Declaration demonstrates that Example 4 of Tappe is inferior to the composition of claim 1;

(4) Claim 1 does not recite any specific amount of chemical ingredients other than the claimed molar ratios. Thus, it is not necessary for the tested amounts to be identical. It has been clearly demonstrated that the

properties of Examples 2-5 to 2-12 of the present invention (Table 2) are superior to the Examples of Tappe that satisfy the claimed molar ratio limitations (Examples 3 and 4, Tables A and B);

(5) Table 1 of the April 19, 2004 Declaration specifically presents test data for alleged homologues A-II-3 and A-II-9. Furthermore, this test data was presented to counter the specific statement of equivalence of EDTA to A-II-3 and A-II-9 made by the Examiner in paragraph III of the Office Action dated February 20, 2004; and

(6) Tests had been performed comparing the composition of claim 1 to Example 4 of Tappe because the Examiner specifically cited Example 4 of Tappe as teaching the present invention. Furthermore, the Examiner had cited EDTA in Example 4 of Tappe as being a homologue of compounds A-II-3 and A-II-9. The Examiner initiated the focus on Example 4 of Tappe, thus, the tests were performed to counter the statements of the Examiner.

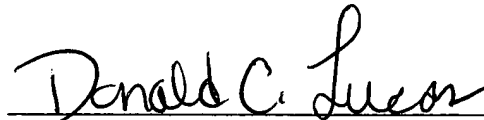
In summary, Applicant has considered prosecution on the merits closed, and this response cancels withdrawn claims 5-8 in order to place the Application in condition for allowance.

In view of the foregoing, it is respectfully submitted that the application is in condition for allowance and such action is respectfully requested. Should any extensions of time or fees be necessary in order to maintain this Application in pending condition, appropriate requests are hereby made and authorization is given to debit Account # 02-2275.

Respectfully submitted,

MUSERLIAN, LUCAS AND MERCANTI, LLP

By:

A handwritten signature in cursive script, reading "Donald C. Lucas", written over a horizontal line.

Donald C. Lucas, 31,275
Attorney for Applicant(s)
475 Park Avenue South, 15th Floor
New York, New York
Tel. # 212-661-8000

DCL/mr

Encl: Return receipt postcard